Supreme Court, U. S.
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. 77-853

JOHN W. WALTON, JR., and RACHEL WALTON,
Petitioners,

vs.

LOUIS J. PAPAGIANOPOULOS,
COUNTY OF SACRAMENTO and STATE CONTROLLER
OF THE STATE OF CALIFORNIA,
Respondents.

BRIEF FOR RESPONDENT LOUIS J. PAPAGIANOPOULOS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI to the Court of Appeal of the State of California, Third Appellate District

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SUMMARY OF FACTS AND PROCEEDINGS

On June 28, 1963, Petitioners' property was sold to the State of California by the County of Sacramento for nonpayment of property taxes for the fiscal year 1962-63. (See Petition, p. 9.) Petitioners thereafter never paid nor tendered their property taxes, hoping instead to sell the property and pay the taxes with the proceeds. Petitioners claim to have relied upon

erroneous legal advice that, by filing a lis pendens, they had precluded any further action by the State of California.

On October 30, 1973, after actual notice by certified mail to Petitioners, the property was sold at public sale by the state to Respondent Louis J. Papagianopoulos. Petitioners were deprived of nothing at this sale, as title to the property had already been passed to the state.

On April 17, 1974, Respondent filed an action against Petitioners for unlawful detainer, trespass, and declaratory relief as to entitlement to the land. On November 4, 1974, Respondent filed a motion for partial summary judgment to establish his right to title and possession of the property. This motion was heard, granted and filed on December 4, 1974.

Appeal from the partial summary judgment was heard by the Court of Appeal of the State of California, Third Appellate District, and the judgment was reaffirmed. Petition for hearing to the California Supreme Court was denied.

Petitioners exhausted all appeals available to them in California, and made no application to any appellate court for further stay. Thus, the stay of execution, which was granted after the summary judgment, was vacated, and Petitioners were evicted from the premises.

The result of these actions was that property which had produced no property tax payments for eleven years did produce, at the sale, part of those arrear-

ages. Further, the property has now been effectively restored to the property tax roles.

DISCUSSION OF QUESTIONS ALLEGEDLY PRESENTED

A. Procedural due process:

Petitioners received various notices for eleven years that their property had been and would be sold for nonpayment of taxes. They admit having actual notice of the final public sale wherein Respondent Papagianopoulos purchased the property. (See Respondent's Appendix A hereto with relevant excerpts of Petitioners' depositions. See also Petitioners' Appendix A attached to Petition, p. iv, footnote 1.)

Petitioners seem to complain that due process was denied in that the California statutory scheme for giving of notices was allegedly not followed. This argument has been considered by three California courts and correctly found to be without merit. The California statutory property tax sale procedure was followed; furthermore, it exceeds the constitutional requirements of due process. *McMaster v. City of Santa Rosa* (1972) 27 C.A.3d 598, 103 Cal.Rptr. 749. The statutes and policies involving tax sales are complex and this issue alone would generate copious briefs.

Petitioners also complain they were denied due process in that they had no notice or opportunity to be heard because Mrs. Walton's name was not on the envelope in which the notice of sale by the state was

mailed. This complaint is unfounded. Although her name may not have been on the envelope, she discussed the notices with her husband and knew what they stated. It is common knowledge that nonpayment of property taxes may subject the property to sale. The fact they relied on their attorney's faulty advice and failed to take the proper action does not raise the issue of due process. Furthermore, there are no facts which indicate the Petitioners had any basis for contesting the taxes due from them.

Petitioners' statement that John Walton was at the tax sale to find out who would buy the property north of his is incredible. (Petitioners' Brief, p. 11.) This explanation for his presence is presented here for the first time.

Petitioners finally complain they reasonably relied on an alleged oral assurance in 1961 by Chauncey LaRue, Sacramento County Tax Collector at that time, that he would "hold up any action against the Waltons." (Petition, p. 8.) Petitioners allege they relied solely on this statement in remaining on the property for eleven years without paying taxes, while ignoring numerous demands for payment of taxes and notices of sale, and took no action other than the filing of a lis pendens which was ineffective. The fact they employed an attorney to file the lis pendens shows they were not, in fact, relying at all on Chauncey LaRue's statement, and the fact the lis pendens was ineffective is not Respondent's responsibility. This claim was correctly found as a matter of law to be insufficient.

B. Sex discrimination:

Petitioner Rachel Walton claims to have been denied equal protection because her name was allegedly not on the notices of sale. This is not the proper case to determine that issue. The first and strongest reason is that Rachel Walton has no standing, not having been injured by the alleged discrimination because she did get notice. Her deposition makes it clear she knew the taxes were not being paid, that the notices of intended sale were received, that she was involved in sending the notices to their attorney, and that she knew of the intended sale. (See Respondent's Appendix A with relevant excerpts of her deposition, and Petitioners' Appendix A attached to Petition, p. vii, footnote 4.)

The second reason for declining to hear this case is that the issue of sex discrimination is raised for the first time on appeal. (See Petitioners' Appendix A, p. vii, footnote 4.) This claim is factually unsupported since there is nothing in the record to indicate that the alleged lack of Rachel Walton's name was based on sex discrimination. The true facts are that the County sends the notice to the first of the co-owners' names on the deed. Had Rachel Walton's name been first, she would have received the notice, not John Walton.

Finally, the question is now moot, as Respondent Papagianopoulos has title to the property and there is no evidence or allegation that he was in any way involved with the alleged discrimination.

C. Equitable estoppel and fraud:

These claims raise no Constitutional issues here. They have been determined on the basis of state law and found to be spurious. Petitioners' only complaint at the motion for summary judgment was that more time should have been given so they could take Respondent's deposition. Respondent was at the time on an extended visit to Greece. Petitioners made no offer to pay his travel expenses nor to pay the expense of taking his deposition in Greece. There is no reason to suppose that this deposition would be useful. Respondent was simply a bona fide purchaser at a tax sale. He could not have been involved in any misrepresentation or fraud. Nothing would justify estoppel as to him.

ISSUES ON APPEAL

Appendix B hereto is the index page from Petitioners' opening brief in the Court of Appeal of California. Obviously, the issues raised in the petition for certiorari were not raised on appeal.

The real issues actually raised here are, in national perspective, unworthy of the attention of the Supreme Court of the United States. There is no need to add additional procedural safeguards to protect property owners from the results of their willfully failing to pay property taxes. Those who fail to pay property taxes should have the burden of diligent action. Tax sales are already so complex that, as the present facts indicate, the property is usually sold

for less than market value (indeed, often less than the taxes due). There is no rational need for the Court to encourage litigation such as the present case. Such litigation will only further reduce the price at tax sales, and further burden the states in their attempts to secure badly needed tax revenues.

CONCLUSION

Petitioners took a chance on faulty advice from their attorney and lost. Their complaint, if any, is against said attorney, not against the purchaser of the property. A spurious action was properly, efficiently and economically disposed of according to the laws of California. No federal questions are present, and this Writ should be denied.

Respectfully submitted,

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January 4, 1978.

(Appendices Follow)

Appendices

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Superior Court of the State of California
for the County of Sacramento

No. 246594

Louis J. Papagianopoulos,
Plaintiff,
vs.
John Walton, Jr., et al.,
Defendants.

John Walton, Jr., and Rachel Walton,
Cross-Complainants,
vs.
Louis J. Papagianopoulos, et al.,
Cross-Defendants.

[Nov. 4, 1974]

DECLARATION IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON FIRST, THIRD AND FIFTH CAUSES OF ACTION ON PLAINTIFF'S COMPLAINT, AND MOTION FOR SUMMARY JUDGMENT AGAINST CROSS-COMPLAINANTS ON THEIR CROSS-COMPLAINT

I, Alvin R. Wohl, declare as follows:

1. That I am the attorney for the Plaintiff herein and Cross-Defendant.

2. That the deposition of Rachel Walton, one of the Defendants and Cross-Complainants herein was taken on July 23, 1974, in my office at 901 H Street, Ste. 503, Sacramento, CA.

3. In said deposition, the Defendant and Cross-Complainant, Rachel Walton, testified beginning on Page 4, line 10 as follows:

"Q Mrs. Walton, where do you presently reside?

"A 3915 Mayhew Road.

"Q And how long have you resided there?

"A Sixteen or seventeen years, I'm not sure.

"Q Is that the same property that is involved in this case?

"A Yes, sir."

4. Again, on Page 6 of said deposition, beginning at line 15, Rachel Walton testified as follows:

"Q Do you know what certified mail means?

"A You bet.

"Q Have you ever mailed anything certified?

"A Yes, many times.

"Q You, yourself, as an office employee?

"A Yes.

"Q And do you know the procedure that you use in the preparation of certified mail?

"A Yes."

5. Again, on Page 7 of said deposition, beginning at Line 2, Rachel Walton testified as follows:

"Q And do you understand the purpose of mailing matters in the mail certified?

"A Yes, sir.

"Q And what is that?

"A Well, that's to know that it reached the person."

6. On Page 9, beginning at Line 12 of Rachel Walton's deposition, she testifies as follows:

"Q Mrs. Walton, I'll show you Plaintiff's Exhibit 1 for identification attached to the—I should say the receipt of certain documents dated June 8, 1972, June 9, 1973 and October 6, 1973. Do you recall receiving any documents from the County Assessor's Office or Collector's Office, or about those dates?

"A Being employed I would not have been at home. This would have had to have been on a Saturday.

"Q Is that your signature on the June 9, '73 receipt?

"A Yes.

"Q Do you recognize the signature of your husband on the other two receipts?

"A Yes. At this time I was confined at Mercy San Juan Hospital on——

"Q On June 9, 1973, that apparently was at your home on a weekend?

"A Apparently so, or else I was ill that day, which is unlikely. I'm not often off."

7. Continuing on Page 10 beginning with Line 1, Mrs. Walton further testified:

"Q Had you been home on the other occasions would you have been the one who signed the receipts normally?

"A My husband possibly wasn't at home, because he always signs everything. I don't.

"Q Do you recall on the June 9, 1973, when you signed that receipt, do you recall what you received on that date?

"A I do not recall, only from what you have there.

"Q Well, did you open the envelope?"

"A I do not recall that.

"Q Do you know that your taxes were delinquent after you received that particular document?

"A Sure.

"Q What?

"A Sure."

8. On Page 13, beginning at Line 14, Mrs. Walton testified as follows through Page 15, Line 24:

"Q You received another notice on June 9, '73; is that correct?

"A I signed for one on June 9, 1973.

"Q And your testimony today is that you, yourself, never opened that envelope or was present when it was opened by anyone; is that your testimony?

"A I was present when my husband and I opened the envelope together.

"Q Oh, you were. All right. And do you recall what the contents of the envelope contained?

"A No, other than the tax problem.

"Q Did you discuss it at all with Mr. Walton?

"A Certainly, we hoped to goodness we could get this thing settled so we could pay these taxes.

"Q Was it evident that it was another notice of intended tax sale?

"A It was evident that we were to be—that's the law. We get a tax bill every year.

"Q I'm talking about this particular notice, Mrs. Walton, and I don't want to put words in your mouth. If this is not what you recall, I'm merely attempting to refresh your recollection. At the time you and your husband opened the envelope on or about that day, or thereafter I should say, do you recall what the contents of the envelope contained?

"A I do not. It was either a notice of the—no, that wouldn't—a tax bill wouldn't come certified, would it? No.

"Q I don't believe so.

"A Well, then, that would have been a notice that—of a possible tax sale.

"Q Did you discuss it with your husband?

"A Yes.

"Q Do you recall what your discussion was?

"A And that would have been—we had an attorney engaged——

"Q But do you recall discussing with your husband——

"A And we turned it over to this attorney.

"Q On or about or shortly thereafter——

"A Yes.

"Q ——June 9, 1973?

"A Uh-huh (affirmative.)

"Q But you and your husband, now, discussed it before you talked to an attorney, did you not?

"A Well, we discussed that we were to turn everything over to the attorney that came.

"Q Mrs. Walton, I'm trying to determine what you and your husband talked about right after you became aware of the contents of that June 9, '73 letter.

"A Certainly, and the attorney was notified immediately.

"Q What did you and your husband talk about with respect to that notice, do you recall?

"A We——

"Q What was said?

"A We referred it to our attorney.

"Q Well, didn't you talk about it at all before you referred it to your attorney, you and your husband?

"A Well, sure, you comment.

"Q What did you comment about, Mrs. Walton?

"A That probably eminent domain was, I'm sure, in effect there, and that it would be settled so these taxes would be taken out and paid.

"Q So you knew at that time, then, that the taxes were delinquent, and this was a notice of intended sale——

"A Right.

"Q ——did you not?

"A That's right.

"Q You actually had actual knowledge of that intended tax sale?

"A Yes, that is right, and we were not getting any results from the state."

9. Mrs. Walton further testified beginning on Page 16 at Line 19 through Page 17, Line 11 as follows:

"Q (By Mr. Wohl) I have identified it as the June 9, '73 receipt, and I started out by her signing it. Do you recall that?

"A Yes, sir.

"Q Are you confused about these notices? I thought you were clear about them. Do you recall receiving it?

"A Yes.

"Q You recall signing for it?

"A Yes.

"Q You recall your husband opening the envelope?

"A Both of us.

"Q Do you recall discussing it?

"A Yes.

"Q And you recall it was a notice of intended tax sale?

"A Right.

"Q In fact, you knew the State was going to sell the property or the County was going to sell the property to the State——

"A Yes.

"Q ——because of the delinquent taxes? You had personal knowledge of that on that day?

"A That is right."

10. That the deposition of John Walton, Jr., was taken on July 23, 1974 in my office at 901 H Street, Ste. 503, Sacramento, CA.

11. In said deposition, Mr. Walton testified as follows on Page 4, beginning on Line 10:

"Q Mr. Walton, where do you reside?

"A 3915 Mayhew Road.

"Q And how long have you resided there?

"A 1958, February, 1958.

"Q Is that when you acquired the property?

"A That is right.

"Q Is that the same property that's the subject of this lawsuit?

"A It is."

12. And, again, on Page 20, Mr. Walton testified as follows beginning at Line 10 through Page 21:

"Q Now, you knew that it is going to be sold to the State for tax delinquency, didn't you, before it was sold?

"A How long?

"Q Well, any time before it was sold.

"A I knew the day they issued me a letter, I believe it was the 6th.

"Q Of when?

"A In October of 1973, and that's the letter I sent over to my attorney, and he read it, and he says, 'Well, there's nothing to worry about, John,' and my attorney at that time was Mr. Laurence Walton.

"Q Is this the letter you received for the notice that's dated October 5th, that's Plaintiff's Exhibit 2?

"A Well, it is something similar, but I don't believe that it's quite right, and I think we've got that on file somewhere, and——

"Q Is it different? You say—what's different?

"A It just don't sound like it was.

"Q But it was a notice similar to that?

"A Yes.

"Q And the land was going to be sold, and you had until October 30th. That was October 6th you received it?

"A Well, I suppose.

"Q You signed for that?

"A Yes. Okay. Now, I take this letter over to this attorney that I had, Laurence Walton, and he reads this. He says, 'Well, there's no problem, John. We'll put on a lis pendens on there, and they can't sell that piece of land until we have this litigation from the State, because

the State's give you an eminent domain, and that supersedes that, lis pendens supersedes the sale, or any condemnation suit.' Now, that is the words he told me. Now, if that wasn't the case he told me wrong, and if it wasn't the case I could have had the money down there and redeemed my property.

"Q Did you have a loan?

"A No, I've got sources that I could have redeemed it, and I could have bid in my property if I had known, and I could have bought my property back at the time of the tax sale.

"Q Do you know how much your taxes were at the time?

"A I really don't know.

"Q So you knew that the State was going to sell it, and you are saying today that you relied on your advice of counsel?

"A Right.

"Q And that's the reason you didn't redeem it?

"A (Witness nods head affirmatively.)

"Q You had notice of sale?

"A Yes, yes, I had a notice of the sale right here, but that's. . . ."

13. The deposition of H. B. Alvord, Treasurer-Tax Collector of the County of Sacramento, was taken on July 23, 1974, in my office at 901 H Street, Ste. 503, Sacramento, CA.

14. In Mr. Alvord's deposition on Page 9 beginning at Line 9 through Page 10, Line 4, Mr. Alvord testified that the sale of said property by this county was duly published in the Sacramento Union. See

Plaintiff's Exhibit 3 and 4 for identification attached to the deposition of Mr. Alvord.

15. The subject property herein was sold to the Plaintiff, Louis J. Papagianopoulos, and a tax deed vesting ownership in him on October 30, 1973 is attached hereto as Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct. Executed on ....., 1974 at Sacramento, California.

ALVIN R. WOHL
Attorney for Plaintiff and
Cross-Defendant

Appendix B

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